

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID CARR,

Plaintiff,

v.

DANIEL E. CUEVA, et al.,

Defendants.

No. 2:24-cv-01680 DJC AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner who filed this civil rights action pursuant to 42 U.S.C. § 1983 without a lawyer. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. For the reasons stated below, the undersigned recommends plaintiff's motion for a temporary restraining order be denied.

I. Background

A. The Complaint

Plaintiff alleged that defendant Dr. Dail was deliberately indifferent to plaintiff's nutritional needs when defendant refused to renew plaintiff's chrono for in cell feeding even though it had been approved by three prior doctors for the previous four years. ECF No. 10 at 5. Plaintiff named defendant Cueva, the prison warden, as an additional defendant but did not allege facts against him.

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1 The court screened plaintiff's complaint and gave him the options of proceeding
2 immediately on his Eighth Amendment deliberate indifference claim against defendant Dr. Dail,
3 or amending his complaint to fix the identified defects with the claim against defendant Cueva.
4 ECF No. 12. Plaintiff elected to amend his complaint and has since requested two extensions of
5 time. ECF Nos. 17, 19, 23. The court granted both requests. ECF Nos. 20, 24. The amended
6 complaint is due February 24, 2025. See ECF No. 24.

7 B. Motion for Preliminary Injunction

8 In August 2024, plaintiff moved for a preliminary injunction asking the court to (1) enjoin
9 "Defendants and their employees, agents and persons acting with them or on their behalf, from
10 withholding adequate nutrition from Defendant" and (2) order "Defendant to reestablish his well
11 established cell feeding regimen for 90 days." ECF No. 6 at 2. On October 11, 2024, the
12 undersigned issued findings and recommendations recommending denial of plaintiff's motion
13 because "the undersigned has screened the complaint and determined that it does not state a claim
14 for relief against defendant Cueva who is the subject of the preliminary injunction motion," and
15 "although plaintiff alleges that he will not receive sufficient nutrition without injunctive relief, he
16 has not provided any evidence to substantiate these allegations." ECF No. 11 at 3. On January
17 10, 2025, the district judge adopted the undersigned recommendation in full. ECF No. 22.

18 C. Motion for Temporary Restraining Order¹

19 Currently pending before the undersigned is plaintiff's motion for a temporary restraining
20 order, filed in December 2024. ECF No. 21. This is plaintiff's second request for preliminary
21 relief. Like the motion for preliminary injunction, the motion for temporary restraining order
22 asks the court to (1) enjoin "defendants and their employees, agents, and persons acting with
23 them, or on their behalf, from confiscating plaintiff's one meal per day outside of chowhall," id.
24 at 2; see also ECF No. 21-2 at 4; and (2) "order the restoration of [plaintiff's] cell feeding with a
25 90 day preliminary injunction," ECF No. 21-2 at 4; see also ECF No. 21-3 at 6. Plaintiff's
26 current motion also seeks to enjoin the California Department of Corrections and Rehabilitation
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28 ¹ Plaintiff re-filed the same motion in January 2025. See ECF No. 26.

1 (“CDCR”) and the California Medical Facility (“CMF”) “from engaging in further retaliatory
2 actions,” ECF No. 21-2 at 3-4; see also ECF No. 21-3 at 6.

3 D. Motion for Reconsideration²

4 Plaintiff has also filed a motion for reconsideration of the district judge’s adoption of the
5 magistrate judge’s findings and recommendations regarding plaintiff’s motion for preliminary
6 injunction. ECF No. 25. Plaintiff claims that since he filed the motion for temporary restraining
7 order, CMF has continued its campaign to withhold food from plaintiff causing him to become
8 anemic. Id. at 2. The motion for reconsideration is currently pending before the district judge.
9 Nonetheless, to the extent plaintiff motion was also intended to amend or supplement his pending
10 motion for temporary restraining order, the magistrate judge will consider these additional
11 allegations in making a recommendation on the motion for temporary restraining order.

12 II. Legal Standards Governing Injunctive Relief

13 A temporary restraining order is an extraordinary measure of relief that a federal court
14 may impose without notice to the adverse party if, in an affidavit or verified complaint, the
15 movant “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the
16 movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The
17 purpose in issuing a temporary restraining order is to preserve the status quo pending a fuller
18 hearing and the standard for issuing a temporary restraining order is essentially the same as that
19 for issuing a preliminary injunction. Stuhlbarg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d
20 832, 839 n.7 (9th Cir. 2001) (stating that the analysis for temporary restraining orders and
21 preliminary injunctions is “substantially identical”).

22 “The proper legal standard for preliminary injunctive relief requires a party to demonstrate
23 ‘[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
24 absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an

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26 ² Plaintiff also seeks clarification of whether the district judge’s order adopting the magistrate
27 judge’s recommendation for denial of a preliminary injunction also resolved plaintiff’s motion for
28 temporary restraining order. See ECF No. 25 at 2. Plaintiff is informed that, prior to today,
neither the magistrate judge nor the district judge has ruled on plaintiff’s motion for temporary
restraining order, filed in December 2024.

1 injunction is in the public interest.” Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir.
2 2009) (citing Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008)) (internal quotations
3 omitted). The Ninth Circuit’s sliding-scale test for a preliminary injunction has been incorporated
4 into the Supreme Court’s four-part Winter standard. Alliance for the Wild Rockies v. Cottrell,
5 632 F.3d 1127, 1131 (9th Cir. 2011) (explaining that the sliding scale approach allowed a
6 stronger showing of one element to offset a weaker showing of another element). “In other
7 words, ‘serious questions going to the merits’ and a hardship balance that tips sharply toward the
8 plaintiff can support issuance of an injunction, assuming the other two elements of the Winter test
9 are also met.” Id. at 1132.

10 The plaintiff, as the moving party, bears the burden of establishing the merits of his or her
11 claims. See Winter, 555 U.S. at 20. Additionally, “[t]hose seeking injunctive relief must proffer
12 evidence sufficient to establish a likelihood of irreparable harm.” Herb Reed Enterprises, LLC v.
13 Fla. Ent. Mgmt., Inc., 736 F.3d 1239, 1251 (9th Cir. 2013).

14 Because the function of a preliminary injunction and temporary restraining order is to
15 preserve the status quo pending a determination on the merits, Chalk v. United States Dist. Court,
16 840 F.2d 701, 704 (9th Cir. 1988), there is heightened scrutiny where the movant seeks to *alter*
17 rather than maintain the status quo, Dahl v. HEM Pharms. Corp., 7 F.3d 1399, 1403 (9th Cir.
18 1993) (holding that mandatory, as opposed to prohibitory, injunctions are “subject to heightened
19 scrutiny and should not be issued unless the facts and law clearly favor the moving party”). “In
20 general, mandatory injunctions ‘are not granted unless extreme or very serious damage will result
21 and are not issued in doubtful cases or where the injury complained of is capable of compensation
22 in damages.’” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 879
23 (9th Cir. 2009) (quoting Anderson v. United States, 612 F.2d 1112, 1115 (9th Cir. 1979)).

24 Additionally, in cases brought by prisoners involving conditions of confinement,
25 any preliminary injunction “must be narrowly drawn, extend no further than necessary to correct
26 the harm the court finds requires preliminary relief, and be the least intrusive means necessary to
27 correct that harm.” 18 U.S.C. § 3626(a)(2).

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1 III. Analysis

2 The undersigned recommends denial of plaintiff's motion for a temporary restraining
3 order. The court previously screened plaintiff's complaint and determined that plaintiff had failed
4 to state a claim for relief against anyone other than Dr. Dail. Because plaintiff has not filed an
5 amended complaint that states cognizable claims against any of the defendants whom plaintiff
6 seeks to enjoin, plaintiff cannot establish a likelihood of success on the merits. Additionally, the
7 new facts alleged in his motion for temporary restraining order and motion for reconsideration are
8 insufficient to carry plaintiff's burden of establishing irreparable harm.

9 Furthermore, a district court has no authority to grant relief in the form of a preliminary
10 injunction where it has no jurisdiction over the parties. Price v. City of Stockton, 390 F.3d 1105,
11 1117 (9th Cir. 2004) (per curiam) ("A federal court may issue an injunction if it has personal
12 jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt to
13 determine the rights of persons not before the court.") (citation omitted). To the extent plaintiff
14 seeks an injunction against non-defendants, the court does not have jurisdiction over those
15 individuals unless plaintiff provides facts showing that they are acting "in active concert or
16 participation" with the defendant. Fed. R. Civ. P. 65(d)(2); Zenith Radio Corp. v. Hazeltine
17 Rsch., Inc., 395 U.S. 100, 112 (1969) ("[A] nonparty with notice cannot be held in contempt until
18 shown to be in concert or participation."). Plaintiff has failed to provide any such facts, and even
19 if he had, no defendant has been served.

20 Plaintiff is advised that the undersigned will recommend denial, without further
21 discussion, of any further motions for a temporary restraining order or preliminary injunction
22 filed *prior* to an amended complaint. If plaintiff files a motion for temporary restraining order or
23 preliminary injunction *concurrently or after* filing an amended complaint, plaintiff is advised that
24 such motions, sought against individuals who are not named in plaintiff's operative complaint,
25 will not be granted because the court lacks jurisdiction.

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IV. Plain Language Summary for Party Proceeding Without an Attorney

Since plaintiff is acting as his own attorney in this case, the court wants to make sure that the words of this order are understood. The following information is meant to explain this order in plain English and is not intended as legal advice.

The undersigned magistrate judge is recommending that your motion for temporary restraining order be denied because you seek an order against individuals whom you have not stated potential claims. You have also not provided evidence that you have a medical condition that requires an in cell feeding chrono or that you previously had an in cell feeding chrono and that discontinuation of such chrono will result in irreparable harm.

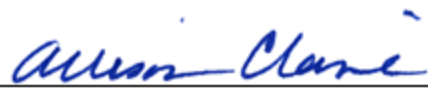
If you do not agree with this decision, you have 21 days to explain why it is not correct. Label your explanation as “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge assigned to your case will make the final decision.

V. Conclusion

IT IS HEREBY RECOMMENDED that plaintiff’s motion for a temporary restraining order (ECF No. 21) be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be served and filed within fourteen days after service of the objections. Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: February 11, 2025


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE